



November 24, 1999

Lieutenant Brad Lancaster  
Amarillo Police Department  
200 East 3<sup>rd</sup>  
Amarillo, Texas 79101-1514

OR99-3384

Dear Lieutenant Lancaster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130926.

The Amarillo Police Department (the department) received a request for offense reports for case numbers 99-67957, 99-70441, 99-70202, 99-97393, and 99-99191. You contend that the requested information is excepted from required public disclosure pursuant to section 552.101 and section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the documents submitted.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the [requirement of public disclosure] . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication [.]

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(c) This section does not except from the [requirement of public disclosure] . . . information that is basic information about an arrested person, an arrest, or a crime.

Section 552.108(a)(1) excepts from disclosure information concerning an ongoing investigation. Regarding case numbers 99-67957 and 99-70202, you state that "the case investigations have not been completed." Therefore, we agree that section 552.108(a)(1) is applicable. You may withhold most of the information requested regarding those two cases at this time pursuant to section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). The department must release such "front page" information, in accordance with *Houston Chronicle*, even if this information is not actually located on the front page of the offense report. See Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). We therefore conclude that, except for "front page" offense report information, you may withhold the records relating to incident reports 99-67957 and 99-70202 under section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the remaining information in those two reports that is not otherwise confidential by law. Gov't Code § 552.007.

As to the remaining incident reports, you only claim that the information is confidential under section 552.101 in conjunction with a right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law and constitutional privacy, as well as information protected by statute. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects the interests in (1) independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court and (2) avoiding disclosure of personal matters. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), cert. denied, 474 U.S. 1062 (1986)); see Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 600 at 4 (1992). The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the

individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987)(citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

We note that you have not marked any of the documents submitted to this office to identify the specific information which should be withheld under a right to privacy. While one of the incident reports you seek to withhold contains information that might be considered highly intimate or embarrassing, we have reviewed your privacy arguments, and we conclude that privacy rights do not except the requested information from public disclosure because the public has a legitimate interest in the requested information. Thus, you may not withhold the remaining three incident reports under section 552.101.

However, the submitted information contains driver's license numbers and social security numbers, which may be protected from disclosure. The social security numbers in the reports may be confidential if they were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. You must withhold the driver's license numbers under section 552.130. We have marked the information that must be withheld. Except for the marked material, incident reports 99-70441, 99-97393, and 99-99191 must be released.

Finally, we are compelled to comment on the department's "Request for Police Records" form. The form states that, when the department seeks to withhold information, the department will send the request and a "letter of challenge" to the Office of the Attorney General. Then, according to the form, the "Attorney General's office will send you notification of our challenge and later an opinion as to whether the information should be released or not. . . . **If the opinion says you may have all or part of the record you will need to contact us and the record will be provided.**" The 76<sup>th</sup> Legislature amended section 552.301 of the Government Code in part by adding subsection (d):

(d) A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to

public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication. [Act of May 25, 1999, 76<sup>th</sup> Leg., R.S., ch. 1319, § 20, 1999 Tex. Sess. Law Serv. 4500, 4508 (to be codified as Gov't Code § 552.301)]

The Act requires the governmental body, not the Office of the Attorney General, to inform the requestor in writing that a decision has been requested and to provide the requestor with a copy of the governmental body's request for the decision. In addition, a governmental body must promptly produce public information for inspection, duplication, or both. *See* Gov't Code § 552.221(a), (b). If a governmental body seeks a decision from this office as to whether information may be withheld and this office determines that the information must be disclosed, the governmental body must either release the information not later than the 10<sup>th</sup> calendar day after receipt of the attorney general's decision or file a cause of action in a Travis County district court seeking relief from compliance with the decision of the attorney general. Gov't Code § 552.353(b)(3). It is not appropriate for a governmental body to require a requestor to contact the governmental body subsequent to its receipt of an attorney general decision to ensure that the information deemed public by this office will be released. It is the governmental body's duty to release the information promptly once it receives a decision from this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 130926

Encl. Submitted documents

cc: Mr. B. P. Gada  
4410 50<sup>th</sup> Street  
Lubbock, Texas 79414  
(w/o enclosures)